



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Acting Secretary of Natural and Historic Resources

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**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NORFOLK SOUTHERN RAILWAY COMPANY
FOR
TRAIN DERAILMENT WEST OF SALEM, VIRGINIA
Unauthorized Discharge
DEQ Incident Report (IR) No.: 297232
NS Spill/Derailment No. SP-52191**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the Department of Environmental Quality and Norfolk Southern Railway Company, regarding the train derailment west of Salem, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.* and 9 VAC 25-21-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Norfolk Southern Railway Company (NSRC) is a business entity authorized to do business in Virginia and references to NSRC include its affiliates, partners, and subsidiaries. NSRC is a "person" within the meaning of Va. Code § 62.1-44.3.
2. NSRC owns and operates an interstate railroad system within the Commonwealth of Virginia.

3. On October 30, 2020, the Virginia Department of Environmental Quality (Department) responded to a report of a NSRC train derailment at the Barley Drive trestle west of Salem, Virginia (Site).
4. At the Site, NSRC train # 822V319 derailed at milepost 255.2. Twenty-six (26) coal hopper rail cars (cars) derailed, with sixteen ending up in the Roanoke River (the River), a state water. Those cars were loaded with approximately 2,600 tons of coal, a pollutant, and an undetermined number of tons were discharged directly into the Roanoke River.
5. The discharge of coal resulted in significant initial in-stream coal accumulation being observed beyond the Salem Water Treat Plant intake (approximately 3.4 miles downstream) with visually notable deposits of fill material for approximately 6.5 miles to the area of Salem (Rotary) Park.
6. This incident was investigated by DEQ as Incident Report IR No. 297232.
7. The Salem Water Plant intake was closed due to the discharge of pollutants from October 30, 2020, until December 1, 2020.
8. On December 4, 2020, NSRC submitted a summary report to describe the steps taken to address the coal discharge into the River at the Site. The steps taken were as follows:
 - i. Sixteen (16) of twenty-six (26) rail cars entered the River;
 - ii. All rail cars were immediately removed from the River and placed in a staging area;
 - iii. Coal deposited in the River immediately adjacent to the derailment was removed using mechanical means;
 - iv. Flow of the River at the time of the derailment was above average due to recent rain events which resulted in the migration of coal downstream;
 - v. Removal of coal deposits in the River were conducted using a combination of hand tools for small deposits and a pumping system to recover large deposit;
 - vi. 1,349.42 tons of coal had been removed as of the date of the report;
 - vii. A total of 27 sampling rounds were completed as of the date of the report and the results that been received are below the 9 VAC 25-260-140 Criteria for Surface Water with the exceptions of exceedances for iron and thallium
 - viii. Iron drinking water exceedances are attributed to high water events and were documented both upstream and downstream of the site;
 - ix. Thallium drinking water exceedance was observed in the first round of sampling, but subsequent sampling has been similar to upstream concentrations.
9. On January 25, 2021, the Department issued Notice of Violation (NOV) No. 2021-BRRO-0001 to the NSRC for the violations of Va. Code § 62.1-44.15:20, 9 VAC 25-260-20.A, and 9 VAC 25-210-50.A.
10. 9 VAC 25-260-20.A. State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or

combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.

11. 9 VAC 25-210-50.A. Except in compliance with a VWP permit; unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands
12. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Permit issued by the Director. NSRC does not have a Permit for the above activities
13. On February 5, 2021, NSRC submitted a Visual Survey Technical Memorandum to the Department in response to the coal derailment at the Site. Due to the absence of visual coal upstream of Niagara Dam, this third in-stream visual survey was conducted nine weeks after the derailment, covering 11.2 miles of the River downstream of Niagara Dam. Overall, the survey did not observe any deposits of coal that would be considered recoverable.
14. On August 2, 2021, in response to the train derailment, Department water monitoring staff collected benthic macroinvertebrate community data to determine impacts from the discharge of pollutants at the Site. Sampling was conducted at four selected sites/stations (one control station above the Site and three stations below the Site) on November 9, 2020, May 13, 2021, and July 29, 2021.
15. During the last sampling event on July 29, 2021, Department staff observed that the riffles habitats at the stations were free of coal particles.
16. Based on the results of documentation submitted on December 4, 2020, February 5, 2021, April 23, 2021, and August 2, 2021, the Department concludes that NSRC has violated Va. Code § 62.1-44.15:20, 9 VAC 25-260-20 and 9 VAC 25-210-50, as described in paragraphs C(3) through C(8), above.
17. NSRC submitted documentation and DEQ staff's inspection of the site on July 29, 2021, verifies that the violations described in C(3) through C(8), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders NSRC, and NSRC agrees to pay a civil charge of \$27,300.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

NSRC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, NSRC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of NSRC for good cause shown by NSRC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. No. 2021-BRRO-0001, dated January 25, 2021. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, NSRC admits the jurisdictional allegations and agrees not to contest but does not admit to any findings of fact or conclusions of law contained in this Order. This Order represents a compromise settlement of contested claims and shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact against NSRC.
4. NSRC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NSRC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by NSRC to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or

the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NSRC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. NSRC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NSRC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

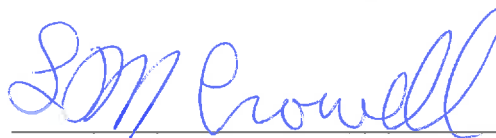
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NSRC. Nevertheless, NSRC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after NSRC has completed all of the requirements of the Order;
 - b. NSRC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to NSRC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NSRC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by NSRC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NSRC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NSRC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NSRC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NSRC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 02 day of March, 2023



Lee M. Crowell, Director, Enforcement Division
Department of Environmental Quality

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Consent Order

Norfolk Southern Railway Company; DEQ IR No.: 297232 NS Spill/Derailment No. SP-52191

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Norfolk Southern Railway Company voluntarily agrees to the issuance of this Order.

Date: 2/3/23 By: *Matthew Germond* Deputy General Counsel
(Person) (Title)
Norfolk Southern Railway Company

~~Commonwealth of Virginia~~

City/County of

State of Georgia
Fulton

The foregoing document was signed and acknowledged before me this 3RD day of February, 2023, by Matthew Germond who is Deputy General Counsel of Norfolk Southern Railway Company, on behalf of the company.

Donna J. Christian

Notary Public

Registration No.

My commission expires: September 27, 2024

Notary seal:

